

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,)	
)	
vs.)	Case Number 1:10-CR-161
)	
YI GUO DONG and)	
RI HONG ZHENG,)	
)	
Defendants.)	

PLEAS OF GUILTY

November 22, 2010

BEFORE THE HON. CHARLES A. PANNELL, JR.

APPEARANCES:

FOR THE GOVERNMENT: Mr. Brian M. Pearce

FOR THE DEFENDANT: Mr. George Chakmakis

Reported by:
Martha J. Frutchey
U.S. District Reporter
Room 2314, United States Courthouse
75 Spring Street, SW
Atlanta, Georgia 30303
(404) 215-1573

1 **November 22, 2010**

2 MR. CHAKMAKIS: I apologize for the delay.

3 THE COURT: That's fine. Have your clients sit on
4 either side of the interpreter, if that's the way you wish us to
5 do it. All right. Let me sound case 10-CR-161, United States
6 of America versus Yi Guo Dong and Ri Hong Zheng Dong. We do
7 have an interpreter? Let me go ahead and have the interpreter
8 sworn.

9 (Interpreter sworn)

10 COURTROOM DEPUTY: Thank you. Sir, would you please
11 give me your name.

12 THE INTERPRETER: My name is Gang Li, spelled G-a-n-g,
13 last name spelled L-i.

14 COURTROOM DEPUTY: Okay. Thank you.

15 THE COURT: All right. This case is set down this
16 afternoon for a plea. Is the government ready?

17 MR. PEARCE: We are, Your Honor.

18 THE COURT: Defense ready?

19 MR. CHAKMAKIS: Yes, Your Honor.

20 MR. PEARCE: One signature short. We'll have that taken
21 care of in a second here, Judge.

22 THE COURT: All right. Let me ask Mr. Pearce to have
23 the defendants acknowledge their signature on the plea form.

24 MR. PEARCE: Yes, Your Honor. I'm going start with the
25 wife, Ri Hong Zheng. Ma'am, I'm showing you your plea agreement

1 in this case. Here on page 8 above where it says signature of
2 defendant, is that your signature?

3 DEFENDANT ZHENG: Yes.

4 MR. PEARCE: And then here on page 9, again, is that
5 your signature?

6 DEFENDANT ZHENG: Yes.

7 MR. PEARCE: And this is your attorney here, George
8 Chakmakis, standing next to you? And, Mr. Chakmakis, have you
9 signed pages 8 and 9 of the plea agreement?

10 MR. CHAKMAKIS: Yes, I have.

11 MR. PEARCE: And then Mr. Dong, I'm showing you your
12 plea agreement, and you see here on page 8 where it says Yi Guo
13 Dong? Is that your signature?

14 DEFENDANT DONG: Yes.

15 MR. PEARCE: And then the next page, page 9, where it
16 says signature of defendant, is that your signature?

17 DEFENDANT DONG: Yes.

18 MR. PEARCE: Your Honor, the defendants have both
19 verified all the signatures. And this is your attorney, Mr.
20 Chakmakis also?

21 DEFENDANT DONG: Yes.

22 MR. PEARCE: And, Mr. Chakmakis, you signed pages 8 and
23 9 of this plea agreement, did you not?

24 MR. CHAKMAKIS: Yes, I did.

25 MR. PEARCE: Your Honor, the government is tendering

1 both pages. There is an Information to be filed in Ms. Zheng's
2 case, Your Honor. Ms. Zheng is pleading to a misdemeanor
3 Information. As a misdemeanor, there is no waiver with that.

4 THE COURT: Is this an additional charge?

5 MR. PEARCE: What will happen, Your Honor, is pursuant
6 to the plea agreement, at sentencing we'll move to dismiss all
7 charges in the Indictment against Ms. Zheng. There are felony
8 charges in the Indictment. We have agreed to a misdemeanor
9 resolution and the Information is the vehicle for that, so that
10 Information charges the misdemeanor version of the copyright
11 statute, so it charges her with a misdemeanor copyright offense.
12 So we move to file that now, Your Honor.

13 THE COURT: Okay. Let me address these remarks to both
14 defendants. Before accepting your guilty pleas there are a
15 number of questions I must ask to ensure that this is a valid
16 plea. If you do not understand my questions, or if you have
17 trouble understanding me through the interpreter, please stop us
18 and tell us that so we can go back over the question or repeat
19 and rephrase the question, because it's essential to a valid
20 plea that you understand each question before you answer it.
21 Can you understand me through the interpreter, Ms. Zheng?

22 DEFENDANT ZHENG: I understand.

23 THE COURT: Can you understand me through the
24 interpreter Mr. Dong?

25 DEFENDANT DONG: Yes.

1 THE COURT: Having been sworn your answers -- let's see.
2 I haven't had -- Have I had them sworn?

3 COURTROOM DEPUTY: No, sir.

4 THE COURT: Let me ask you both to stand and raise your
5 right hands and the clerk will give you an oath.
6 (Defendants sworn)

7 COURTROOM DEPUTY: Thank you. You may be seated.

8 THE COURT: Having been sworn, your answers to my
9 questions will be subject to the penalties of perjury or of
10 making a false statement if you do not answer truthfully. In
11 other words, if you answer any of my questions falsely, your
12 answers may later be used against you in another prosecution for
13 perjury or of making a false statement. Do you understand that?

14 DEFENDANT DONG: I understand.

15 DEFENDANT ZHENG: I understand.

16 THE COURT: Let me ask the female defendant. What is
17 your full name?

18 DEFENDANT ZHENG: Ri Hong Zheng.

19 THE COURT: How old are you?

20 DEFENDANT ZHENG: 40.

21 THE COURT: How much education have you had?

22 DEFENDANT ZHENG: Middle school.

23 THE COURT: Middle school. And where did she go to
24 middle school?

25 DEFENDANT ZHENG: In China.

1 THE COURT: Have you taken any narcotic drugs, medicine,
2 pills or any alcoholic beverages in the past twenty-four hours?

3 DEFENDANT ZHENG: No.

4 THE COURT: Have you been treated recently for any
5 mental illness or addiction to narcotic drugs of any kind?

6 DEFENDANT ZHENG: No.

7 THE COURT: All right. Let me ask Mr. Dong. What is
8 your full name?

9 DEFENDANT DONG: Yi Guo Dong.

10 THE COURT: How old are you?

11 DEFENDANT DONG: 42.

12 THE COURT: How much education have you had?

13 DEFENDANT DONG: Second grade of elementary school.

14 THE COURT: And where did he attend elementary school?

15 DEFENDANT DONG: In China.

16 THE COURT: How long have you been in this country?

17 DEFENDANT DONG: Twenty years.

18 THE COURT: Are you a naturalized citizen?

19 DEFENDANT DONG: I'm a green card holder.

20 THE COURT: You are here on a visa?

21 DEFENDANT DONG: When I came in, I was granted by a
22 judge.

23 MR. CHAKMAKIS: It is my understanding he's a permanent
24 resident. I have seen his permanent resident card, Your Honor.

25 THE COURT: I beg your pardon?

1 MR. CHAKMAKIS: It is my understanding he is a permanent
2 resident. I have reviewed his permanent resident card, actually
3 today.

4 THE COURT: Let me ask Ms. Zheng. Is she a naturalized
5 citizen or is she here on some kind of visa?

6 DEFENDANT ZHENG: Currently resident, a visa. I have a
7 right to reside here, applying for one-year card.

8 MR. PEARCE: It may help move things along. My
9 understanding is she has a petition for asylum. She applied for
10 asylum. That gives her sort of a temporary interim status.

11 THE COURT: They are here legally.

12 MR. PEARCE: They are here legally.

13 THE COURT: But they are not citizens, so they may be
14 subject to deportation.

15 MR. PEARCE: Yes, that's correct.

16 THE COURT: All right. Let's see, let me ask Ms. Zheng.
17 Have you taken any narcotic drugs, medicine, pills or any
18 alcoholic beverages in the past twenty-four hours?

19 DEFENDANT ZHENG: No.

20 THE COURT: Have you been treated recently for any
21 mental illness or addiction to narcotic drugs of any kind?

22 DEFENDANT ZHENG: No.

23 THE COURT: Let me go back to Mr. Dong and make sure I
24 have asked him. Have you taken any narcotic drugs, medicine,
25 pills, or any alcoholic beverages in the past twenty-four hours?

1 DEFENDANT DONG: No.

2 THE COURT: Have you been treated recently for any
3 mental illness or addiction to narcotic drugs of any kind?

4 DEFENDANT DONG: No.

5 THE COURT: All right. Now, let me do this with Ms.
6 Zheng. At the present time there is an Indictment, but there is
7 also -- the government has also filed an Information to a
8 misdemeanor charge that you are pleading guilty to. Have you
9 received a copy of that Information, that is the written charges
10 pending against you, and have you fully discussed those charges
11 in the case in general with your attorney, Mr. Chakmakis?

12 MR. CHAKMAKIS: That's correct.

13 DEFENDANT ZHENG: Yes.

14 THE COURT: Are you fully satisfied with Mr. Chakmakis
15 as your attorney, his representation, and the advice he has
16 given you in this case?

17 DEFENDANT ZHENG: Yes.

18 THE COURT: Is your willingness to plead guilty the
19 result of discussions that you and your attorney have had with
20 the attorney for the government?

21 DEFENDANT ZHENG: Yes.

22 THE COURT: Has anyone attempted in any way to force you
23 to enter this plea of guilty?

24 DEFENDANT ZHENG: No.

25 THE COURT: Are you pleading guilty of your own free

1 will because you are guilty?

2 DEFENDANT ZHENG: Yes.

3 THE COURT: All right. Let me ask Mr. Dong. Have you
4 received a copy of the Indictment pending against you, that is,
5 the written charges against you, and have you fully discussed
6 those charges and the case in general with your attorney?

7 DEFENDANT DONG: Yes.

8 THE COURT: Are you fully satisfied with Mr. Chakmakis
9 as your attorney, his counsel and representation, and the advice
10 he has given you in the case?

11 DEFENDANT DONG: Yes.

12 THE COURT: Is your willingness to plead guilty the
13 result of discussions that you and your attorney have had with
14 the attorney for the government?

15 DEFENDANT DONG: Yes.

16 THE COURT: Has anyone attempted in any way to force you
17 to enter this plea of guilty?

18 DEFENDANT DONG: No.

19 THE COURT: Are you pleading guilty of your own free
20 will because you are guilty?

21 DEFENDANT DONG: Yes.

22 THE COURT: All right. Now, Ms. Zheng, they are really
23 proceeding against you on a misdemeanor with an Information, so
24 there is no right to have that presented to the Grand Jury and
25 the government can proceed on misdemeanors by filing an

1 Information. And, Mr. Dong, yours is proceeding on this
2 Indictment returned by a Grand Jury. I need to advise both of
3 you that under the laws and the Constitution of the United
4 States each of you have the right to enter a plea of not guilty
5 and maintain your plea of not guilty to and throughout a trial
6 by a jury. Do you understand that, Ms. Zheng?

7 DEFENDANT ZHENG: I know.

8 THE COURT: Mr. Dong, do you understand?

9 DEFENDANT DONG: Yes.

10 THE COURT: If you want a trial each of you would be
11 entitled to a speedy and public trial by a jury on the charges
12 contained in the Indictment, and if we had a trial in the case
13 you would have the right to have your attorney sit with you and
14 assist you throughout the trial. Do you understand that, Ms.
15 Zheng?

16 DEFENDANT ZHENG: I understand.

17 THE COURT: Mr. Dong?

18 DEFENDANT DONG: I understand.

19 THE COURT: If we had a trial in the case you would be
20 presumed innocent and the government would have to overcome that
21 presumption and prove your guilt by competent evidence beyond a
22 reasonable doubt. You would not have to prove you were
23 innocent, because the burden would always be upon the government
24 to prove your guilt beyond a reasonable doubt. Do you
25 understand that, Ms. Zheng?

1 DEFENDANT ZHENG: I understand.

2 THE COURT: Mr. Dong, do you understand?

3 DEFENDANT DONG: I understand.

4 THE COURT: At a trial you would not have to do or say
5 anything, but all the witnesses for the government would have to
6 come to court and testify in your presence, and all evidence
7 presented to the jury would be done so in your presence, and you
8 and your attorney would have the right to confront the
9 witnesses, challenge their testimony, cross examine each witness
10 for the government and object to any evidence offered by the
11 government. Do you understand that, Ms. Zheng?

12 DEFENDANT ZHENG: I understand.

13 THE COURT: Mr. Dong, do you understand?

14 DEFENDANT DONG: I understand.

15 THE COURT: If you chose to do so at a trial you could
16 present your own evidence and call witnesses in your own behalf,
17 and you could testify in your own behalf if you wanted to, but
18 nobody could force you to testify in the case or present any
19 evidence. Also you would have the subpoena power of this Court
20 to bring any witnesses or evidence to present to the jury. Do
21 you understand that, Ms. Zheng?

22 DEFENDANT ZHENG: I understand.

23 THE COURT: Do you understand, Mr. Dong?

24 DEFENDANT DONG: I understand.

25 THE COURT: If you chose not to testify at a trial or

1 not to put up any evidence, that fact could not be used against
2 you and no inference harmful to you could be made by the jury.
3 Also in a trial each of you would have the right to have the
4 jury render a unanimous verdict before you could be convicted,
5 but if I accept your plea you need to understand that you'll be
6 waiving your right to a trial and the other rights I have just
7 discussed, and by entering a plea of guilty there will be no
8 trial and the judge will simply enter a judgment of guilt and
9 sentence you on the basis of your guilty plea. Do you
10 understand that, Ms. Zheng?

11 DEFENDANT ZHENG: I understand.

12 THE COURT: Mr. Dong?

13 DEFENDANT DONG: I understand.

14 THE COURT: Also by pleading guilty you need to
15 understand that you will also have to waive your right not to
16 incriminate yourself, since I'm about to ask you questions about
17 what you did in order to satisfy the Court that you are guilty
18 as charged, and you will have to acknowledge your guilt. Are
19 you willing to waive and give up your right to a trial and the
20 other rights I have just discussed? Ms. Zheng?

21 DEFENDANT ZHENG: Yes, I waive those rights.

22 THE COURT: Mr. Dong?

23 DEFENDANT DONG: Yes, I waive those rights.

24 THE COURT: All right. At this time I'll ask Mr. Pearce
25 to summarize the terms of the plea agreement and then I will

1 have some questions for each of you about your plea agreement.

2 MR. PEARCE: Yes, Your Honor. Both defendants in their
3 separate plea agreements acknowledge that they are pleading
4 guilty because they are guilty and for no other reason, and both
5 of them acknowledge in their plea agreements that they are
6 waiving certain rights which Your Honor has just gone over.

7 Each is acknowledging the maximum penalties for their
8 separate offenses. Mr. Dong acknowledges that the maximum term
9 of imprisonment for his offense under the Indictment is ten
10 years custody, up to three years supervised release, up to a two
11 million dollar fine, full restitution, a special assessment of
12 one hundred dollars, and possible forfeiture.

13 Ms. Zheng acknowledges that her offense, which is a
14 misdemeanor, has the following maximum penalties: A term of
15 imprisonment of up to one year, a term of supervised release of
16 up to one year, a maximum fine of one hundred thousand dollars,
17 restitution, a special assessment of fifty dollars, and possible
18 forfeiture.

19 In each of the two plea agreements the government is
20 stating that it will -- is committing to making certain
21 recommendations and nothing higher. For Mr. Dong, the
22 government will recommend that the base offense level is 8; that
23 there is up to a 12-level enhancement for the loss amount in the
24 case under section 2B5.3 of the guidelines, and that Mr. Dong
25 will receive the full three-level adjustment for acceptance of

1 responsibility.

2 And then as to Ms. Zheng, the government's
3 recommendation there would again be a base offense level of 8
4 plus 2 for an offense involving importation minus 2 for
5 acceptance, and that would give an adjusted offense level of 8.
6 The government will recommend the full adjustment, whatever it
7 may be, for acceptance of responsibility for both defendants.

8 In both plea agreements the government reserves the
9 right to tell the probation officer and the Court all the facts
10 about that defendant in this case, and to answer all the Court's
11 and probation officer's questions about the case. In both plea
12 agreements the government reserves the right to modify its
13 recommendations if new evidence comes to light between now and
14 the sentencing.

15 For both defendants the government will recommend a
16 low-end sentence for the adjusted guideline range found by the
17 Court and is recommending no fine. Mr. Dong recognizes in his
18 plea agreement that he will have to pay a hundred dollar special
19 assessment within thirty days of his guilty plea. For Ms. Zheng
20 that amount is fifty dollars.

21 Mr. Dong agrees to pay restitution, which we have
22 calculated based on the investigative costs of the victims
23 collectively, and we've determined that amount is \$22,911.66 and
24 agrees that that amount will be considered due and payable
25 immediately.

1 There is a restitution provision in Ms. Zheng's
2 agreement. It's the government's expectation that Mr. Dong will
3 pay any restitution on behalf of the couple and there will be no
4 restitution for Ms. Zheng to pay.

5 In both plea agreements the defendant reserves the right
6 to argue for downward departures. The guideline recommendations
7 are the government's only. The defense reserves the right to
8 make -- to argue for any sentence under the plea agreement,
9 including one that will be below the guideline range.

10 Both defendants recognize in their plea agreement that
11 the plea agreements are only recommendations to the Court, and
12 that you, Judge, will make the final decision in the case.

13 There is a limited waiver of appeal in both plea
14 agreements. Both defendants are waiving the right to appeal
15 unless one of two things happens; the Court departs upward under
16 the guidelines and sentences them above the guideline range
17 called for by the guidelines, or the government for some reason
18 files an appeal. So if the government files an appeal they can
19 answer with their own appeal. Otherwise they are waiving the
20 right to attack their conviction, that is, to take back their
21 guilty plea. They are waiving the right to appeal it, file a
22 civil lawsuit attacking it in any way. They are also agreeing
23 not to seek early termination of any supervised release or
24 probation, any electronic monitoring condition, or any travel
25 restriction imposed by the Court. And that's in section H.

1 The parties agree that there are no other agreements in
2 the case. I did tell them not by way of agreement, but my plan
3 in this case is to let the Court know at sentencing that the
4 couple, while they haven't given us what amounts to substantial
5 assistance, they did make -- they did engage in some cooperative
6 efforts. They tried, and they did some other things that helped
7 us find some money that they had in an account that we had our
8 eye on anyway, and they helped in other ways, but we'll get into
9 that at sentencing, Judge, but that wasn't an agreement. That
10 was something I told them I planned to do and will. And those
11 are the plea agreements, Your Honor.

12 One thing I probably could have put in the plea
13 agreement and didn't, but Your Honor could maybe cover it, is
14 that in light of the case law from last summer, both of these
15 defendants, neither is a citizen, so -- and I understand both of
16 them have an immigration lawyer, and that's one reason why we
17 have an Information for Ms. Zheng. They recognize that what
18 happens here today could hurt their immigration status. Ms.
19 Zheng's plea is hoping, with her plea, to improve her
20 immigration chances insofar as a misdemeanor will -- may protect
21 her against what is called -- being what is called an aggravated
22 felon, automatically deportable. Both are from China. That
23 makes it complicated. China doesn't always take people back on
24 the time table that we ask for, or any at all, but I thought it
25 should be clear on the record, at least, that the defendants

1 understand, as I'm sure their immigration attorneys told them,
2 that there are possible consequences for their immigration
3 status here, that no one, including the Court, can predict with
4 any certainty what will happen there, that that is not in our
5 hands, that is in the hands of an immigration judge, and that
6 the defendants confirm their readiness to plead guilty despite
7 those possibilities.

8 THE COURT: All right, sir. Well, let me focus on Ms.
9 Zheng. The Assistant U.S. Attorney has disclosed the plea
10 agreement that you and your attorney have entered into and the
11 terms of the agreement. Do you agree with the description that
12 he has just given to the Court?

13 DEFENDANT ZHENG: Yes.

14 THE COURT: Do you understand the plea agreement?

15 DEFENDANT ZHENG: Yes.

16 THE COURT: Do you understand that the terms of your
17 plea agreement are merely recommendations to the judge and the
18 judge may reject the recommendations without permitting you to
19 withdraw your plea of guilty and impose a sentence that is more
20 severe than you may anticipate?

21 DEFENDANT ZHENG: I understand.

22 THE COURT: Is this the only agreement you have entered
23 into with the government?

24 DEFENDANT ZHENG: Yes.

25 THE COURT: All right. Let me ask Mr. Dong. Do you

1 understand the plea agreement that the Assistant U.S. Attorney
2 has outlined?

3 DEFENDANT DONG: Yes.

4 THE COURT: Do you understand the plea agreement?

5 DEFENDANT DONG: Yes.

6 THE COURT: Do you understand that the terms of the plea
7 agreement are merely recommendations to the judge and the judge
8 may reject the recommendations without permitting you to
9 withdraw your plea of guilty and impose a sentence that is more
10 severe than you may anticipate?

11 DEFENDANT DONG: I understand.

12 THE COURT: Is this the only agreement you have entered
13 into with the government?

14 DEFENDANT DONG: Yes.

15 THE COURT: Let me ask Ms. Zheng. Has anyone made any
16 promise to you other than what is set out in the plea agreement
17 that's induced you to enter this plea of guilty?

18 DEFENDANT ZHENG: No.

19 THE COURT: Has anyone made a promise to you of what
20 your actual sentence will be?

21 DEFENDANT ZHENG: No.

22 THE COURT: Other than the plea agreement, has anyone
23 threatened or forced you to enter this plea of guilty or told
24 you that if you did not plead guilty further charges would be
25 brought against you or other adverse action would be taken

1 against you?

2 DEFENDANT ZHENG: No.

3 THE COURT: Have you been advised by anyone not to tell
4 the complete truth today?

5 DEFENDANT ZHENG: No.

6 THE COURT: Let me ask Mr. Dong. Has anyone made a
7 promise to you other than what's in the plea agreement that's
8 induced you to enter this plea of guilty?

9 DEFENDANT DONG: No.

10 THE COURT: Has anybody made a promise to you of what
11 your actual sentence will be?

12 DEFENDANT DONG: No.

13 THE COURT: Other than the plea agreement, has anybody
14 threatened or forced you to enter this plea of guilty or told
15 you that if you did not plead guilty further charges would be
16 brought against you or other adverse action would be taken
17 against you?

18 DEFENDANT DONG: No.

19 THE COURT: Have you been advised by anyone not to tell
20 the complete truth today?

21 DEFENDANT DONG: No.

22 THE COURT: All right. I'll ask Mr. Pearce to state the
23 elements of the offense that the defendants are pleading guilty
24 to and then outline or summarize what the government would
25 expect to show if the case were to go to trial.

1 MR. PEARCE: Yes, Your Honor. Mr. Dong is pleading
2 guilty to Count 1 in the Indictment. That alleges a felony
3 count of criminal trademark infringement under Title 18 USC
4 section 2320. The elements of that crime are that the defendant
5 trafficked or attempted to traffic in goods or services, here
6 merchandise, and all that trafficking means in this case is
7 trying to sell it or possessed it with the intent to sell it;
8 that this trafficking or attempt to traffic was intentional;
9 that the defendant used a counterfeit trademark on goods, or in
10 connection with them in some way. Here the counterfeit
11 trademark is on the fake goods. That the defendant knew that
12 the mark was counterfeit.

13 And as to Ms. Zheng, she is pleading guilty to a
14 misdemeanor count, Title 18, Section 2319(B)3, which
15 incorporates Title 17, section 506(A)1(a). The copyright
16 statute has some misdemeanor versions and some felony versions,
17 and she is pleading guilty to a misdemeanor version, the
18 elements of which are that the defendant willfully infringed a
19 copyright by distribution or reproduction, basically by either
20 selling it, or making it, or both, for purposes of commercial
21 advantage or private financial gain; for money, to make money.
22 Those are the elements of the two different offenses that they
23 are pleading guilty to.

24 If the case were to go to trial, Your Honor, the
25 government would show the following: That Mr. Dong and Ms.

1 Zheng owned and operated a store in Mableton, Georgia on the
2 Veterans Memorial Highway, and at the store they sold
3 merchandise, backpacks, batteries, hats, gloves, purses, that
4 kind of thing, and that all happened here in the Northern
5 District of Georgia, or at least some of it did. Their store
6 was in the northern district. And at no time did Mr. Dong, or
7 Ms. Zheng, or OK Wholesale, which is what they called their
8 business at one point, or any of the different business names
9 that they gave that business, at no time did they or their
10 companies have the right or were they authorized dealers of the
11 merchandise at issue here. For Ms. Zheng, it's Hello Kitty
12 merchandise, which our evidence would show there was some
13 copyright interests that were infringed, and for Mr. Dong,
14 Northface backpacks. But they never were authorized dealers of
15 Northface or Hello Kitty merchandise.

16 And the evidence would show that back in 2007 in the
17 late summer, U.S. Customs seized some shipments of counterfeit
18 John Deere merchandise, which was heading to DGI Imports.
19 That's the old name for their business. And they were told, or
20 Mr. Dong was told that the trademarks were counterfeit and
21 that's why they were being taken.

22 And then in October of 2007, John Deere sent them a
23 cease and desist letter to their company, which Ms. Zheng
24 acknowledged, and she turned over some more merchandise that
25 they had there that had John Deere on it that was counterfeit.

1 They then dissolved that company and formed another one, OK
2 Wholesale, and then in January, 2009, ICE Agent Ashley, who is
3 beside me, he went into their store and saw that they had some
4 more counterfeit items on display, and then some investigators
5 for some of the victim companies came there later that month,
6 because they had heard -- or because they heard there were still
7 counterfeits there, and the couple turned over lots and lots of
8 goods voluntarily. They acknowledged they were counterfeit and
9 they surrendered the goods in the face of this action.

10 Then on or about January 28th, 2009, Ms. Zheng sold a
11 customer some Hello Kitty backpacks that were counterfeits, sold
12 the customer around twenty of them for about two dollars a
13 piece. They retail for about fifteen dollars. OK Wholesale had
14 imported Hello Kitty backpacks from China. In fact, when they
15 turned over the counterfeit goods in January of 2009, there was
16 a Hello Kitty -- one left in the store, and it was a knock-off.
17 And then our evidence would show that that Hello Kitty logo was
18 not just a trademark, it was a registered copyright in the
19 United States, and that when Ms. Zheng sold those Hello Kitty
20 backpacks to her customer in January 2009, she knew she wasn't
21 an authorized seller. She knew that her supplier was not an
22 authorized manufacturer, and that the Hello Kitty backpacks were
23 not the real thing. They were counterfeits. And the evidence
24 will show she knew it was against the law to sell counterfeit
25 merchandise. The evidence would show that her purpose was to

1 make money. It wasn't for any other reason. It was part of her
2 business, to make a profit on selling backpacks and other
3 merchandise, just like any other -- most other store owners.

4 As to Mr. Dong, the government's evidence would show
5 that on January 28th, 2009, he had 6,793 Northface backpacks
6 there in their inventory; that he had imported them from China
7 to sell to customers in the southeast, and his purpose was
8 commercial, to make money; that those counterfeit Northface
9 backpacks had a trademark on them, Northface, which as of that
10 date was in use as required by law, and was registered with the
11 U.S. Patent and Trademark Office for use on backpacks.

12 The evidence will show that the logo on the backpacks
13 infringed Northface's trademark, their word mark for those
14 backpacks, and that the Northface logo on those backpacks was
15 substantially similar to the real one.

16 Finally, the evidence would show that Mr. Dong knew that
17 his Northface backpacks weren't real, and that the Northface
18 logo on them was not real, was counterfeit.

19 THE COURT: All right. Let me ask Ms. Zheng. Have you
20 discussed with your attorney the charges in the Information
21 filed against you that you are pleading guilty to?

22 DEFENDANT ZHENG: Yes.

23 THE COURT: Do you understand these charges?

24 DEFENDANT ZHENG: Yes.

25 THE COURT: Mr. Dong, have you discussed with your

1 attorney the charges in the Indictment that you are pleading
2 guilty to?

3 DEFENDANT DONG: Yes.

4 THE COURT: Do you understand these charges?

5 DEFENDANT DONG: Yes.

6 THE COURT: Ms. Zheng, do you agree with the
7 prosecutor's summary of what you did in this case?

8 DEFENDANT ZHENG: Yes.

9 THE COURT: Are you, in fact, guilty?

10 DEFENDANT ZHENG: Yes.

11 THE COURT: At the time you did these things did you
12 know that it was illegal to do that?

13 DEFENDANT ZHENG: I knew.

14 THE COURT: Mr. Dong, do you agree with the prosecutor's
15 summary of what you did in this case?

16 DEFENDANT DONG: Yes.

17 THE COURT: Are you, in fact, guilty?

18 DEFENDANT DONG: Yes.

19 THE COURT: At the time you were doing this did you know
20 that if you were caught you would be arrested?

21 DEFENDANT DONG: Yes.

22 THE COURT: Both of you did this for the money, is that
23 right, Ms. Zheng?

24 DEFENDANT ZHENG: Yes.

25 THE COURT: Mr. Dong, you did this for the money, is

1 that correct?

2 DEFENDANT DONG: Yes.

3 THE COURT: All right. Now, both of you have the same
4 attorney. You have the right to have separate attorneys, but it
5 is my belief that you wish to waive your right to have separate
6 attorneys and both proceed with the same attorney. Is that
7 right, Ms. Zheng?

8 DEFENDANT ZHENG: Yes.

9 THE COURT: Mr. Dong?

10 DEFENDANT DONG: Yes.

11 THE COURT: Let me ask your attorney: Have you advised
12 each defendant concerning the legality of any statements, or
13 confessions, or other evidence the government has to use against
14 that defendant?

15 MR. CHAKMAKIS: Yes, Your Honor.

16 THE COURT: Is either defendant pleading guilty because
17 of any illegally-obtained evidence in the possession of the
18 government in your opinion?

19 MR. CHAKMAKIS: No, Your Honor.

20 THE COURT: The Court finds there is a factual basis for
21 the plea of guilty of Ms. Zheng and also a factual basis for the
22 plea of guilty of Mr. Dong. Now, in Ms. Zheng's plea agreement,
23 the maximum penalty is one year in confinement. The Court can
24 sentence her also to a term of supervised release that follows
25 confinement of one year supervised release, and a maximum fine

1 of one hundred thousand dollars. The Court can sentence and
2 require full restitution, and definitely there will be a
3 mandatory special assessment of fifty dollars, plus the Court
4 can order forfeiture of any and all proceedings from the
5 commission of the offense and all property used to facilitate
6 the offense. Do you understand that, Ms. Zheng?

7 DEFENDANT ZHENG: Yes.

8 THE COURT: Mr. Dong, the Court can sentence you up to
9 ten years in confinement and also up to three years supervised
10 release that would follow confinement that works like parole or
11 probation, a maximum fine of two million dollars, full
12 restitution. Definitely there will be a mandatory special
13 assessment of one hundred dollars due and payable, and the Court
14 can also order forfeiture of any and all proceedings from the
15 commission of the offense and all property used to facilitate
16 the offense. Do you understand that?

17 DEFENDANT DONG: I know.

18 THE COURT: I need to advise both of you that the United
19 States Sentencing Commission has issued guidelines for judges to
20 follow in determining the sentence in a criminal case. Have you
21 and your attorney talked about those Sentencing Guidelines and
22 how they might apply to your case? Ms. Zheng?

23 DEFENDANT ZHENG: Yes.

24 THE COURT: Mr. Dong?

25 DEFENDANT DONG: Yes.

1 THE COURT: Both of you need to understand it's not
2 possible to determine exactly how the guidelines will affect
3 your case today and the Court will have a presentence report
4 completed and you and the government will have an opportunity to
5 challenge the facts reported by the probation officer. Also,
6 after it's been determined how the guidelines apply to your case
7 the judge has the authority to impose a sentence that is more
8 severe or less severe than the sentence called for by the
9 guidelines. In fact, the Court is not bound by the guidelines,
10 but the judge must consult the guidelines and take them into
11 account at the time of sentencing. Do you understand that, Ms.
12 Zheng?

13 DEFENDANT ZHENG: I understand.

14 THE COURT: Mr. Dong, do you understand?

15 DEFENDANT DONG: I understand.

16 THE COURT: Well, let's see. I have got a waiver of
17 appeal. Also under most circumstances you would have the right
18 to appeal any sentence that the Court imposes, but in your plea
19 agreement you are waiving your right to appeal. With the
20 exceptions noted in your plea agreement, you are giving up that
21 right, which means you'll be bound by the judge's decision.
22 Also you are waiving your right to collaterally attack your
23 sentence in any post conviction proceeding, such as a habeas
24 corpus proceeding. Do you understand that, Ms. Zheng?

25 DEFENDANT ZHENG: Yes.

1 THE COURT: Mr. Dong, do you understand?

2 DEFENDANT DONG: Yes.

3 THE COURT: Parole has been abolished in the federal
4 system. If you're sentenced to prison you will not be released
5 on parole, but you may be sentenced to a term of supervised
6 release that follows incarceration and works like parole or
7 probation, and if you violate the conditions of your supervised
8 release you can be sent back to prison for the entire term of
9 your supervised release. Do you understand that?

10 DEFENDANT ZHENG: I understand.

11 THE COURT: Mr. Dong, do you understand?

12 DEFENDANT DONG: I understand.

13 THE COURT: All right. Now, Mr. Dong, this is a felony
14 that you are pleading guilty to and if your plea is accepted
15 you'll be adjudicated guilty of this felony offense and that
16 adjudication may deprive you of certain valuable civil rights.
17 In your case I expect it may cause your deportation from this
18 country and act as a bar from you ever reentering this country.
19 Do you understand that?

20 DEFENDANT DONG: I understand.

21 THE COURT: It also may be used against you to enhance a
22 sentence for any future offense. Do you understand that?

23 DEFENDANT DONG: I understand.

24 THE COURT: All right. Now, Ms. Zheng, this is a
25 misdemeanor you are pleading guilty to and if your plea is

1 accepted you'll be adjudicated guilty of that offense and this
2 adjudication may deprive you of certain rights and it may cause
3 your deportation from this country and act as a bar to you ever
4 reentering this country. Do you understand that?

5 DEFENDANT ZHENG: Yes, I understand.

6 THE COURT: It can be used later in another criminal
7 proceeding or future criminal proceeding to enhance any sentence
8 that you might receive. Do you understand that?

9 DEFENDANT ZHENG: I understand.

10 THE COURT: If the sentence is more severe than you
11 expect, you will still be bound by your plea and have no right
12 to withdraw it. Do you understand that, Ms. Zheng?

13 DEFENDANT ZHENG: I understand.

14 THE COURT: Mr. Dong, do you understand?

15 DEFENDANT DONG: Yes.

16 THE COURT: Both of you need to understand that if I do
17 not accept the sentencing recommendations in your plea agreement
18 you will still be bound by your plea and have no right to
19 withdraw it. Do you understand that, Ms. Zheng?

20 DEFENDANT ZHENG: Yes.

21 THE COURT: Mr. Dong, do you understand?

22 DEFENDANT DONG: Yes.

23 THE COURT: Is there anything I have said or any
24 questions I have asked that you do not understand or you wish me
25 to go back over and clarify, Ms. Zheng?

1 DEFENDANT ZHENG: No.

2 THE COURT: Mr. Dong?

3 DEFENDANT DONG: No.

4 THE COURT: Do you and your attorney feel that you have
5 had sufficient time to think about and discuss this matter fully
6 among yourselves before entering this plea of guilty today, Ms.
7 Zheng?

8 DEFENDANT ZHENG: Yes.

9 THE COURT: Mr. Dong?

10 DEFENDANT DONG: Yes.

11 THE COURT: And Ms. Zheng, are you fully satisfied with
12 your attorney, his representation, the advice he has given you
13 in this case?

14 DEFENDANT ZHENG: Yes.

15 THE COURT: And, Mr. Dong, are you fully satisfied with
16 your attorney, his representation, and the advice he has given
17 you in this case?

18 DEFENDANT DONG: Yes.

19 THE COURT: Do either of you or your attorney know any
20 reason that I should not accept the plea of guilty?

21 DEFENDANT DONG: No.

22 THE COURT: All right. Mr. Dong says no. Ms. Zheng?

23 DEFENDANT ZHENG: No.

24 THE COURT: And Mr. Chakmakis?

25 MR. CHAKMAKIS: No, Your Honor.

1 THE COURT: Well, let me take Ms. Zheng first. At this
2 time the Court finds the defendant understands the charges and
3 the consequences of her plea of guilty. The Court's observed
4 the defendant during the proceeding and she does not appear to
5 be under the influence of any substance that might affect her
6 judgment or actions in any manner. The Court finds that the
7 offer of the plea of guilty of the defendant to the accusation
8 in the Information has a factual basis, is free of any coercive
9 influence, is voluntarily made with full knowledge of the charge
10 against her and the consequences of her plea. The Court finds
11 the defendant is competent to understand these proceedings and
12 to enter a knowing plea of guilty. The Court finds there have
13 been no improper promises of any kind made to her by anyone,
14 that all promises are set out in the plea agreement filed here
15 in open court. The Court finds the defendant's waiver of her
16 right to appeal is made knowingly and voluntarily. It is hereby
17 ordered that the plea of guilty of the defendant to the crime
18 charged in the Information is accepted and entered. Ms. Zheng,
19 you are hereby adjudicated guilty on the charge in the
20 Information. Have you got any questions?

21 DEFENDANT ZHENG: No.

22 THE COURT: All right. Now Mr. Dong. At this time the
23 Court finds the defendant, Mr. Dong, understands the charges and
24 the consequences of his plea of guilty. The Court's observed
25 the defendant during the proceeding and he does not appear to be

1 under the influence of any substance that might affect his
2 judgment or actions in any manner. The Court finds that the
3 offer of the plea of guilty of the defendant -- let's see. He
4 just pleaded guilty to Count 1. Finds that the offer of the
5 plea of guilty to Count 1 of the Indictment has a factual basis,
6 is free of any coercive influence of any kind, is voluntarily
7 made with full knowledge of the charge against him and the
8 consequences of his plea. The Court finds the defendant is
9 competent to understand these proceedings and to enter a knowing
10 plea of guilty, and the Court finds there have been no improper
11 promises of any kind made to him by anyone, that all promises
12 are set out in his plea agreement.

13 The Court finds the defendant's waiver of his right to
14 appeal is made knowingly and voluntarily. It's hereby ordered
15 that the plea of guilty of the defendant to the one count -- or
16 Count 1 of the Indictment is accepted and entered. Mr. Dong,
17 you are hereby adjudicated guilty on Count 1 of the Indictment.
18 Have you got any questions?

19 DEFENDANT DONG: No.

20 THE COURT: Ask the clerk to set a date for sentencing.

21 MR. CHAKMAKIS: Your Honor, I have a request on that
22 issue. Based on conversations and consultation with immigration
23 counsel, I'm requesting a date for sentencing March the 22nd,
24 2011 or later. It's my understanding that there are some
25 immigration issues and for safety the immigration counsel has

1 advised me --

2 THE COURT: For both defendants?

3 MR. CHAKMAKIS: Actually it is a request, but it's
4 primarily involving Mr. Dong, and I have discussed it with the
5 government. The government has indicated they won't oppose that
6 request, but also I'd just like to point out both defendants
7 have been on release since arrest without any incident. They
8 have cooperated.

9 THE COURT: Well, if you didn't plead guilty I probably
10 couldn't get to your trial for some time and sentencing would
11 wind up being about that same date. You want them set after
12 March --

13 MR. CHAKMAKIS: After March 21st.

14 THE COURT: I hope I don't get many of these requests.

15 COURTROOM DEPUTY: March 28th.

16 THE COURT: March 28th. At what time, Madam Clerk?

17 COURTROOM DEPUTY: 10 and 10:30.

18 THE COURT: All right. All right. Is there anything
19 else we need to take up today?

20 MR. PEARCE: Nothing from the government, Your Honor.

21 MR. CHAKMAKIS: Nothing from the defense, Your Honor.

22 THE COURT: Court will be in recess.

23

24

25

C E R T I F I C A T E

I, Martha J. Frutchey, do hereby certify that I am a U.S. District Court Reporter for the Northern District of Georgia, Atlanta Division; that I reported the foregoing and the same is a true and accurate transcription of my shorthand notes as taken aforesaid.

Martha J. Frutchey